

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANE R. TERRELL**

Claimant

VS.

**TRAINING & EVALUATION CENTER  
FOR HANDICAPPED OF HUTCHINSON**

Respondent

and

## CORNHUSKER CASUALTY

Insurance Carrier

Docket No. 1,006,036

## ORDER

Claimant appeals from an Order entered by Administrative Law Judge (ALJ) Bruce E. Moore on March 13, 2003.

## ISSUES

The ALJ denied benefits based on his finding that claimant failed to serve a timely written claim for compensation on the employer. Claimant seeks Appeals Board (Board) review of that finding contending that the Occurrence Report Form dated September 9, 1999 satisfies the written claim requirement of K.S.A. 44-520a. Whether claimant made a timely written claim for compensation is the only issue for review.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Board concludes that the ALJ's Order should be reversed.

As stated, whether claimant made timely written claim, is the sole issue for review by the Board. In their brief to the Board, the respondent and its insurance carrier stipulated that the claim is otherwise compensable.

After claimant was injured on September 9, 1999, she called her supervisor and reported her accident. Claimant also told her supervisor that she may need medical treatment. The supervisor told claimant to complete an Occurrence Report Form, which she did that same day. The Occurrence Report Form, which was filled out and signed by claimant was also delivered to the supervisor on September 9, 1999. In that report claimant specifically states that she is in need of medical treatment.<sup>1</sup> The supervisor authorized claimant to obtain medical treatment. Claimant obviously thought this accident report form was prepared for the purpose of receiving workers compensation benefits and that by submitting it as instructed she had completed the requirements necessary to seek medical treatment benefits. In fact, claimant did receive medical treatment from respondent through its workers compensation physician.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.<sup>2</sup> The same purpose or function has been ascribed to the requirement for notice found in K.S.A. 44-520.<sup>3</sup> Written claim is, however, one step beyond notice in that an intent to ask the employer to pay compensation is required. In *Fitzwater*<sup>4</sup> the Kansas Supreme Court described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The Occurrence Report Form claimant completed for her supervisor contained a description of the accident and injury. Because notice of the accident had already been given by telephone to the supervisor, the purpose of allowing respondent the opportunity

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<sup>1</sup> P.H. Trans., Cl. Ex. 1

<sup>2</sup> *Craig v. Electrolux Corp.*, 212 Kan. 75, 82, 510 P.2d 138 (1973).

<sup>3</sup> *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

<sup>4</sup> *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957).

to investigate her accident had already been accomplished. By this Occurrence Report Form the claimant's intent was to both satisfy the employer's reporting requirements and to receive authorized medical treatment (compensation). When claimant delivered the Occurrence Report Form to her supervisor claimant obviously believed she was doing what was necessary to receive workers compensation benefits, specifically medical treatment. Claimant's intent is evidenced by the fact that she hand wrote on the Occurrence Report Form "need some" after the printed words "Medical Treatment." Furthermore, she thereafter received the workers compensation benefit of medical treatment.

On the issue of written claim the Court of Appeals in *Lott-Edwards*<sup>5</sup> cites with approval the Kansas Supreme Court's opinion in *Pyeatt*<sup>6</sup> and says:

Turning to the written claim issue, we note its purpose is to enable the employer to know about the injury in order to make a timely investigation. *Pyeatt v. Roadway Express, Inc.*, 243 Kan. 200, 204, 756 P.2d 438 (1988). In *Pyeatt*, the court found the employer had sufficient notice that the subsequent injury aggravated the prior injury and the compensation sought was for the cumulative effect of two work-related accidents. The court noted that Pyeatt's ultimate claim differed from his initial claim, but the employer was not prejudiced because the cause and type of the injury was known to the employer. The court held that even though Pyeatt did not amend his original claim, the employer had sufficient notice and knowledge of the accidents and sufficient knowledge that the claim for compensation was based on both accidents.<sup>7</sup>

In addition, the Board considers the Supreme Court's opinion in *Ours*<sup>8</sup> to be instructive.

The written claim required by K.S.A. 1972 Supp. 44-520a to be served upon the employer under the Workmen's Compensation Act need not be signed by or for the claimant. The written claim may be presented in any manner

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<sup>5</sup> *Lott-Edwards v. Americold Corp.*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000).

<sup>6</sup> *Pyeatt v. Roadway Express, Inc.*, 243 Kan. 200, 756 P.2d 438 (1988).

<sup>7</sup> *Id.* at 206.

<sup>8</sup> *Ours v. Lackey*, 213 Kan. 72, 515 P.2d 1071 (1973).

and through any person or agency. The claim may be served upon the employer's duly authorized agent.<sup>9</sup>

The Board concludes that the Occurrence Report Form claimant filled out, signed and delivered to her supervisor was intended to be and does satisfy the purposes of a written claim. Written claimant was, therefore, timely.

**Award**

**WHEREFORE**, the Order entered by Administrative Law Judge Bruce E. Moore dated March 13, 2003, is reversed and this matter is remanded to the Administrative Law Judge for further proceedings and/or orders consistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2003.

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BOARD MEMBER

c: Larry A. Bolton, Attorney for Claimant  
Jeff K. Cooper, Attorney for Respondent and Cornhusker Casualty Ins. Co.  
Matthew J. Schaefer, Attorney for Respondent and Hartford Ins. Co.  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>9</sup> *Id.* at Syl. ¶ 4.

**JANE R. TERRELL**

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